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In the Supreme Court of the United States

OCTOBER TERM, 1978

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY,
PETITIONER,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-5) is reported at 592 F.2d 919. The memorandum opinion and order of the district court (Pet. App. B-8 to B-14) is reported at 464 F. Supp. 400. The order of the district court denying petitioner's motion to dismiss (Pet. App. C-15 to C-19) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. A-6 to A-7) was entered on April 9, 1979, and a petition for rehearing was denied on May 7, 1979 (Pet. App. D-20 to D-21). The petition for a writ of certiorari was filed on June 4, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a rule prohibiting all competitive bidding by accountants adopted by a state agency pursuant to a statute authorizing it to promulgate rules appropriate to maintain a high standard of integrity among accountants is immune from the Sherman Act under the "state action" doctrine of *Parker* v. *Brown*, 317 U.S. 341 (1943).

2. Whether the evidence established a "contract, combination * * *, or conspiracy" within the meaning of Section 1 of the Sherman Act, 15 U.S.C. 1.

STATEMENT

1. In 1976, the United States filed a civil antitrust complaint against petitioner, the Texas State Board of Public Accountancy, charging it with violating Section 1 of the Sherman Act, 15 U.S.C. 1, by restraining price competition among Texas accountants. The Board had adopted, and a voting majority of accountants had ratified, Rule 14 of the Rules of Professional Conduct, which prohibited all competitive bidding among accountants (Pet. App. F-57 to F-58). The rule prevented accountants, who would

otherwise have done so, from quoting prices or giving fee estimates for price comparisons (Pet. App. B-9).

The parties stipulated all of the relevant facts [1] including all of the written legislative history of the Texas Public Accountancy Act of 1945 (Vernon's Tex. Civ. Stats. Ann., Art. 41a-(Pet. App. E-22-E-51)).[2] The Board contended that Rule 14 was authorized by Section 5 of the Act which permitted the Board to "promulgate * * * rules of professional conduct appropriate to establish and maintain a high standard of integrity in the profession of public accountancy" (Pet. App. E-24 to E-25).

The district court held that the Board had violated, and was not immune from, Section 1 of the Sherman Act (Pet. B-8 to B-14). The court held (Pet. App. B-10) that the total ban on competitive bidding is a *per se* restraint of trade. *National Society of Professional Engineers* v. *United States*, 435 U.S. 679 (1978). The Board's adoption of Rule 14 and the accountants' ratification of and acquiescence in the restraint was held to be a "contract, combination * * *,

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[1] Among other things the stipulation chronicled the history of competitive bidding restraints in Texas (Pet. App. F-53 to F-61).

[2] By the Board's own admission, there are no other official documents discussing the extent of the Board's rulemaking authority, no written communications from the Board to any elected Texas official concerning competitive bidding, no documents discussing the Board's relationship to the Texas government, and no documents discussing the legislative intent with respect to a ban on bidding (Gorey Affidavit, pars. 12-13, 16-17 and Exh. D).

or conspiracy" within the meaning of Section 1 (Pet. App. B-10 to B-11).

The court rejected petitioner's claim that it was immune from the Sherman Act merely because of its status as a state agency. Applying the rationale of *City of Lafayette* v. *Louisiana Power and Light Co.*, 435 U.S. 389 (1978) (plurality opinion), the court stated that the Public Accountancy Act of 1945 did not mandate, contemplate, direct, or authorize the anticompetitive rule adopted and enforced by the Board (Pet. App. B-13). The court enjoined the enforcement of Rule 14 or any other rule prohibiting competitive bidding (*id.* at B-13 to B-14).

The Fifth Circuit summarily affirmed (Pet. App. A). One judge dissented, contending that the record was inadequate to discern whether the Texas legislature, in enacting the Public Accountancy Act of 1945, "contemplated" an anticompetitive ethical rule (*id.* at A-3 to A-5).

2. Subsequent to the court of appeals' decision and to the filing of the petition, the Texas legislature enacted, and the governor signed, the Public Accountancy Act of 1979 (reprinted in the Appendix, *infra*). Section 6 of the new Act, effective September 1, 1979, states that the Board "shall promulgate rules deemed necessary or advisable to effectuate this Act, including * * * rules of professional conduct * * * to insure that the conduct and competitive practices of licensees serve the purposes of this Act and the best interest of the public" (see page 6a, *infra*). More specifically, Section 6 prohibits re-

strictions on advertisements or competitive bidding unless necessary to ban deceptive or "unprofessional" communications (Section 6(a)(1)); to prohibit fraud or coercion (Section 6(a)(2)); or to insure that there is no competitive bidding for government jobs, or for any jobs—other than tax, consulting, or small business jobs—where the accounting statement is submitted to a third party (Section 6(a)(3)(A) and (B)).

ARGUMENT

Petitioner challenges both the holding that a contract, combination, or conspiracy was established and the holding that its action was not "state action" immune under *Parker* v. *Brown*. These holdings, however, were correct. Moreover, events subsequent to the court of appeals' judgment have stripped the case of much of its prospective significance. Accordingly, review by this Court is unwarranted.

1. The courts below correctly found that the government' evidence demonstrated a "contract, combination * * *, or conspiracy" within the meaning of Section 1 of the Sherman Act. The nine practicing accountants who comprised the Board promulgated a rule and submitted it to practicing accountants for ratification. Endorsed by a majority vote, the restraint took effect and was enforced by the Board. These facts establish a prohibited conspiracy. *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208, 227 (1939). The licensees' subsequent acquiescence in the rule, even if under the threat of disciplinary action, is also a sufficient basis for finding the requisite agreement. See, *e.g.*, *National Society of*

Professional Engineers, supra, 435 U.S. at 684 n. 5; *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773, 781-782 (1975); *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134, 142 (1968).

2. The courts below correctly concluded that the Board's adoption of Rule 14 was not immune from the antitrust laws.[3] A state instrumentality is not immune from the antitrust laws unless it demonstrates that "'from the authority given * * * to operate in a particular area, * * * the legislature contemplated the kind of action complained of.'" *City of Lafayette, supra*, 435 U.S. at 415 (plurality opinion). Moreover, where the state instrumentality consists entirely of persons who stand to benefit from their decisions, its activities must be carefully scrutinized. *Goldfarb* v. *Virginia State Bar, supra*, 421 U.S. at 791.[4] Applying these standards, the courts below concluded that the state legislation did not contemplate the restraint in question and that peti-

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[3] The district court considered all the legislative history that exists on the question of sovereign authorization of the anticompetitive restraint. Petitioner acknowledges that there is no more legislative history. See note 2, *supra*. Thus the district court could properly decide this question of law. Cf. *New Motor Vehicle Board of California* v. *Orrin W. Fox Co.*, No. 77-837 (Dec. 5, 1978), slip op. 5-6 and n. 13. Although petitioner objects to the summary judgment procedure (Pet. 19), it fails to give any hint of the evidence it would present were it given another opportunity to litigate.

[4] Under the Public Accountancy Act of 1945, the Board was comprised of nine privately practicing accountants. The Board's rules were ratified by private practitioners with no public participation.

tioner's adoption and enforcement of it were not immune (Pet. Apps. A, B, C).[5]

The language of the Public Accountancy Act of 1945, pursuant to which Rule 14 was purportedly adopted, contained neither mandate nor authorization to eliminate price competition: the purpose of that Act was to "protect the public against fraud, deception as the consequences of ignorance or incompetence * * * by regulating the practice of public accounting * * * through the issuance of permits and licenses to only those who, in the judgment of the legislature, are qualified to engage in such practice." *Texas State Board of Public Accountancy* v. *Fulcher*, 515 S.W.2d 950, 954, 956 (Tex. Civ. App. 1974). The 1945 Act furthered that licensing purpose by providing detailed eligibility standards and controlling the use of accountancy tradenames (Pet. App. E, Sections 8-20). In contrast to the specific eligibility and tradename requirements, the 1945 Act nowhere mentioned an intent to tamper with the pricing of accountancy services or to ban totally competitive bidding. The 1945 Act certainly was not an example "of economic regulation in which the very purpose of the government control is to avoid the consequences of unrestrained competition." *Cantor* v. *Detroit Edison Co.*, 428 U.S. 579, 595 (1976). Compare

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[5] In its earlier order denying petitioner's motion to dismiss, the district court correctly observed that "[t]he question of whether or not a particular anticompetitive activity was encompassed within the scope of the alleged statute authorizing the action is one that must be considered in light of all of the facts" (Pet. App. C-18).

Bates v. *State Bar of Arizona*, 433 U.S. 350 (1977) (challenged restraint mandated by sovereign itself, not narrowly constituted state agency; restraint was at core of comprehensive regulatory system; policy was clearly articulated, re-examined, and actively supervised by sovereign).

Nor do the historical facts offered by petitioner (Pet. 16) demonstrate a statutory policy to displace pricing competition with regulation. *City of Lafayette, supra*, 435 U.S. at 413. When the 1945 Act was passed, the previous Board had not adopted a rule proscribing competitive bidding (Pet. App. F, par. 5). The legislature was thus not, by its silence, perpetuating a rule like Rule 14. And the 1971 Professional Services Procurement Act (Vernon's Tex. Civ. Stat. Ann., Art. 664-4; Pet. App. F, par. 19) demonstrates only that the sovereign felt compelled to legislate a ban on competitive bidding when the State purchased professional services; otherwise, professionals would be free to compete. Cf. *National Society of Professional Engineers, supra*, 435 U.S. at 694-695 n. 21.

3. Recent events have sapped this case of prospective significance. The Board has repealed Rule 14. The Texas legislature has enacted a new accountancy Act which became effective on September 1, 1979. The new Act states when the Board may and may not adopt rules prohibiting competitive bidding.

While the case is not moot,[6] the specific "state action" question presented in the petition is thus no longer "special and important," see Rule 19 of the Rules of his Court; *Rice* v. *Sioux City Memorial Park Cemetery*, 349 U.S. 70, 73-74 (1955), for the question of the validity of Rule 14 has no apparent prospective significance and should not arise again. The question of the Board's authority to adopt former Rule 14 has now been confronted by the Texas legislature, and the new law does not appear to authorize readoption of the former Rule. Consequently, there is no reason for this Court to consider the validity of former Rule 14.

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[6] Because the Board in the past exceeded the sovereign's mandate by banning competitive bidding, an injunction was appropriate to prevent future unauthorized conduct. Although the new Act authorizes the Board to adopt some specific restraints on competitive bidding, it does not authorize the Board to adopt a rule which, like former Rule 14, would completely prohibit competitive bidding. Thus, the passage of the new Act does not eliminate all need for the injunction entered in this case; the injunction will continue to bar conduct that is not authorized by the new legislation. See *United States* v. *Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968); *United States* v. *W.T. Grant Co.*, 345 U.S. 629 (1953). We have advised petitioner that the government will not regard any anticompetitive rule authorized by the new statute as a violation of the injunction (see Pet. App. B-13 to B-14).

Moreover, even when a case becomes moot after decision by the court of appeals, the Court should not vacate the judgment where, as here, the petition would not otherwise have been granted. See our briefs in opposition in *Velsicol Chemical Corp.* v. *United States*, cert. denied, 435 U.S. 942 (1978), and *Aqua Media, Ltd.* v. *United States*, cert. denied, No. 78-237 (Nov. 6, 1978). We are sending copies of those briefs to counsel for petitioner.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1979

APPENDIX

Enrolled S.B. No. 797

AN ACT

relating to regulation of persons who practice public accountancy; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECION 1. POLICY AND PURPOSE. The practice of public accountancy is in all respects a learned profession having specialized educational and experience requirements. The terms "accountant" and "auditor" and the derivations, combinations, and abbreviations of those terms carry with them an implication of competence in the profession of public accountancy on which the public relies in personal, business, and public activities and enterprises. It is the policy of this state and the purpose of this Act that the admission of persons to practice public accountancy depends on education and experience commensurate with and required by the exigencies of the profession, that persons professing to practice public accountancy be qualified to do so, that the persons continue to maintain high standards of professional competence, integrity, and learning, that areas of specialized practice require special training, and that the activities and competitive practices of those practicing public accountancy be regulated to be free of commercial exploitation toward the end that the public will be provided with a high level of professional

competence at reasonable fees by independent, qualified persons.

SECTION 1A. SHORT TITLE. This Act may be cited as the Public Accountancy Act of 1979.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board" means the Texas State Board of Public Accountancy.

(2) "Person" means an individual, partnership, or corporation.

(3) "State" includes any state, territory, or insular possession of the United States and the District of Columbia.

(4) "Corporation" means a professional public accounting corporation organized under The Texas Professional Corporation Act, as amended (Article 1528e, Vernon's Texas Civil Statutes), or an equivalent law of another state, territory, or foreign country.

(5) "Financial statement" means a statement and related footnotes that purport to show financial position at a specified time or changes in financial position during a specified period of time, including a statement that uses the cash or other incomplete basis of accounting. The term includes a balance sheet, statement of income, statement of retained earnings, statement of changes in financial position, and statement of changes in owners' equity or any combination thereof, but does not include incidental financial data included in a management advisory or consulting services report to support recommendations to a client, nor does it include a tax return and supporting schedules.

SECTION 3. ACTS NOT RESTRICTED. (a) Nothing contained in this Act shall be construed as applying to restrict any official act of any county auditor or other officer of the state, county, municipality, or other political subdivision or any officer of a federal department or agency or of their assistants, deputies, or employees while working in their official capacities.

(b) Nothing contained in this Act shall prohibit any person not a certified public accountant or public accountant from serving as an employee of a certified public accountant or public accountant, partnership, or corporation composed of certified public accountants and/or public accountants holding a license or licenses to practice issued by the board; provided, however, that such employee shall not issue any accounting or financial statement over his own name.

(c) Nothing contained in this Act shall prohibit a certified public accountant or a registered public accountant of another state or any accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accountancy in such country, from temporarily practicing in this state on professional business incident to his regular practice outside this state; provided that such temporary practice is conducted in conformity with the laws of Texas and the regulations and rules of professional conduct promulgated by the board. The person coming into this state shall notify the board of his incidental, temporary practice in the state and shall pay to the board a fee by the board, not to exceed $10.

SECTION 4. STATE BOARD OF PUBLIC ACCOUNTANCY. (a) The Texas State Board of Public Accountancy shall consist of 12 members, each of whom shall be a citizen of the United States and a resident of this state. Members of the board and their successors shall be appointed by the governor with the advice and consent of the senate. At least seven members shall be certified public accountants in public practice. Two members shall be certified public accountants or public accountants in public practice. The remaining three members shall be public representatives who are not licensed under this Act and who are not financially involved in an organization subject to regulation by the board. The term of office of each member of the board shall be six years and each member shall continue until a successor is appointed. Members of the present board shall continue in office until their respective terms have expired or until their successors have been appointed.

(b) A member of the board may not be an officer, employee, or paid consultant of a trade association of the public accountancy profession.

(c) A member or employee of the board may not be related within the second degree of affinity or within the second degree of consanguinity to a person who is an officer, employee, or paid consultant of a trade association of the profession of public accountancy.

(d) A board member who has served as a member for six consecutive years shall not be eligible for

reappointment until two years shall have elapsed between the end of the term of his last prior appointment and the beginning of the term of a new appointment.

(e) Each member of the board is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the board and to $50 for each day on which the member attends an official meeting of the board or assists in the administration of an examination under this Act.

(f) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(g) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(h) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as a general counsel to the board or serve as a member of the board.

SECTION 5. POWERS AND DUTIES OF BOARD. (a) The board shall administer and carry out this Act and shall:

(1) elect from its members a chairman, secretary, treasurer, and other officers as the board considers necessary;

(2) keep records of all proceedings and actions by and before the board;

(3) keep a seal which shall be judicially noticed; and

(4) employ personnel and independent contractors necessary to assist it in the performance of its duties.

(b) A majority of the board constitutes a quorum for the transaction of business. The members of the board who are not certified public accountants have all the authority, responsibility, and duties of any other member of the board.

(c) The Board shall keep an information file about each complaint filed with the board. If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly and until the complaint is finally disposed of, shall notify the complainant of the status of the complaint.

SECTION 6. RULEMAKING. (a) The board shall promulgate rules deemed necessary or advisable to effectuate this Act, including the promulgation of rules of professional conduct in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of this Act and the best interest of the public. The board in its rules of professional conduct shall not restrict advertising or competitive bidding by licensees except if necessary to:

(1) insure that advertising, price information, and other communications from licensees are in-

formative, free of deception, and consistent with the professionalism expected and deserved by the public from those engaged in the practice of public accountancy;

(2) insure that the conduct and dealings of licensees are free from fraud, undue influence, deception, intimidation, overreaching, harassment, and other forms of vexatious conduct, including uninvited solicitations to perform professional accounting services; provided, however, that the term "uninvited solicitation" shall not be deemed to include advertising in print, radio, motion pictures, and television media; or

(3) regulate the competitive practices of licensees to the extent necessary to insure that:

(A) contracts or engagements between a licensee and any state agency, political subdivision, county, municipality, district, authority, or publicly owned utility for the performance of professional accounting services are not solicited or awarded on the basis of competitive bids submitted for such contracts or engagements in violation of law;

(B) contracts or engagements for the preparation of or opinion on any financial statement which is or can be used by or given to a person or entity not a party to the contract or engagement for the purpose of inducing reliance thereon are not entered into on the basis of competitive bids; this paragraph shall not apply to any tax or consulting services; further, this paragraph shall not apply to any accounting services or any contracts or engagements for or

opinion on any financial statement of any sole proprietorship, partnership, or corporation whose sales or other revenues did not exceed $300,000 for the latest complete fiscal year; however, the $300,000 amount provided in this paragraph shall be adjusted proportionately upward or downward on the first day of each calendar year according to changes from January 1, 1979, in the Consumer Price Index for all Urban Consumers published by the United States Department of Labor; or

(C) no licensee engages in any competitive practice which would impair the independence of or quality of services rendered by any licensee or which would impair or restrict the opportunity for members of the public to seek and secure high quality professional accounting services at reasonable prices or which would unreasonably restrict competition among licensees.

The board may adopt a system of required annual continuing education for licensees to assure that the licensees remain informed of changes in the field of accountancy. The board may recognize areas of specialization in the field of accountancy and may recognize alternate ways by which licensees may demonstrate acceptable levels of competency.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the

rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statments.

SECTION 7. EXPENSES OF BOARD. (a) The fees and other money received by the board under this Act shall be deposited in the state treasury to the credit of a special fund to be known as the public accountancy fund and may be used only for the administration of this Act.

(b) The board shall file an annual report of its activities with the governor and the Legislative Budget Board. The report shall include a summary statement of all receipts and disbursements of the board for each calendar year. The board's funds shall be audited each fiscal year by the state auditor.

SECTION 8. PROHIBITION AGAINST PRACTICING WITHOUT LICENSE. (a) No person shall assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant, unless such person has received a certificate as a certified public accountant under this or prior Acts, holds a license issued under Section 9 of this Act which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under Section 10 of this Act; provided, however, that an accountant of another state or foreign country who has registered under the provisions of this or prior

Acts and who holds a license issued under Section 9 of this Act may use the title under which he is generally known in his state or country followed by the name of the state or country from which he received his certificate, license, or degree.

(b) No partnership or corporation shall assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless such partnership or corporation is registered as a partnership or corporation or certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such partnership's or corporation's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(c) No person shall assume or use the title or designation "Public Accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant, unless such person is registered as a public accountant under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under Section 10 of this Act or unless such person has received a certificate as a certified public accountant under this or prior Acts, holds a license

issued under Section 9 of this Act, and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(d) No partnership or corporation shall assume or use the title or designation "Public Accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants, unless such partnership or corporation is registered as a partnership or corporation of public accountants under this or prior Acts or as a partnership or corporation of certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such partnership's or corporation's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(e) No person shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations, "CA," "PA," "EA," "RA," or "LA," or similar abbreviations likely to be confused with "CPA"; provided, however, that only a person holding a license under Section 9 of this Act and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act may hold himself out to the public as an

"accountant" or "auditor" or any combination of said terms; and provided further that a foreign accountant registered under this or prior Acts who holds a license issued under Section 9 of this Act and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act, may use the title under which he is generally known in his state or country, followed by the name of the state or country from which he received his certificate, license, or degree.

(f) No person shall sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he is an accountant or auditor or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement, unless he has complied with the applicable provisions of this Act; provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he holds in such organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(g) No licensee shall assume or use a name which is misleading in any way as to the legal form of the firm or as to the persons who are partners, officers, or shareholders of the firm. The name or designation any partnership or corporation may assume or use shall contain the personal name or names of one or more individuals presently or previously members thereof, and the name or designation any individual may assume or use shall contain his name. No trade name or descriptive words indicating character or grade of service offered may be used or included except as authorized by rules promulgated by the board.

(h) No licensee shall assume or use the designation "and Company" or "and Associates" or abbreviations thereof in designating a firm in the practice of public accountancy unless there are at least two persons holding licenses under this Act involved in the practice of the firm.

SECTION 9. ANNUAL LICENSES TO PRACTICE. (a) Licenses shall be issued by the board to the following upon the payment of fees hereinafter specified:

(1) holders of the certificate of "Certified Public Accountant" issued under this or prior Acts; and

(2) such persons as are registered with the board under the provisions of this or prior Acts.

There shall be paid to the Texas State Board of Public Accountancy by all persons referred to in Subdivisions (1) and (2) of this subsection an annual license fee not to exceed $60. All licenses shall

expire on the 31st day of December of each year or on such other date or dates as set by the board pursuant to Subsection (b) of this section, but shall annually be renewed for a period of one year upon the payment of a fee of not more than $60, the board being hereby given the authority and duty to determine the amount of such renewal fee not less than 30 days prior to the beginning of the year to which it applies and to mail notices thereof each year by that date.

Failure of any licensee to pay the annual license renewal fee on or before the date it is due shall automatically cancel his license. Any licensee whose license shall have been canceled because of failure to pay the annual license renewal fee may secure reinstatment of his license at any time within that license year upon payment of the delinquent fee together with a penalty of $20. After expiration of the license fee was not paid, no license shall be reinstated except upon application and examination satisfactory to the board and payment of delinquent fees and a penalty to be assessed by the board. The board shall have no authority to waive the collection of any fee or penalty.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. Dates relating to cancellation and reinstatement of licenses shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each licensee shall pay only that portion

of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee shall be payable.

SECTION 10. REGISTRATION WITH THE BOARD. The following persons shall be registered with the board for the practice of public accountancy in this state:

(1) all individuals qualified under this or prior Acts;

(2) partnerships qualified under this or prior Acts;

(3) corporations qualified under this or prior Acts; and

(4) each office established or maintained in this state for the practice of public accountancy in this state by a certified public accountant or partnership or corporation of certified public accountants or by a public accountant or a partnership or corporation of public accountants or by an individual registered under Section 14 of this Act, but no fee shall be charged for such registration. Each such office shall be under the direct supervision of a resident manager who may be either a principal or a staff employee holding a license issued by the board which is in full force and effect; provided that the title or designation "Certified Public Accountant" or the abbreviation "CPA" shall not be used in connection with such office unless such resident manager is the holder of a certificate as a certified public accountant and a license issued by the board, both of which are in full

force and effect. Such resident manager may serve in such capacity only in one office at the same time except as authorized by rule of the board. The board shall by regulation prescribe the procedure to be followed in effecting such registrations. There shall at all times be prominently displayed in each office registered under the provisions of this section, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the Texas State Board of Public Accountancy and which shall contain a statement informing consumers that complaints can be directed to the board.

All applicants for registration shall furnish satisfactory evidence of eligibility for registration. The board shall have power to examine such applications and may refuse registration to any applicant who is unable to meet the standards imposed by this Act.

SECTION 11. RULES AND REQUIREMENTS APPLICABLE TO PARTNERSHIPS AND CORPORATIONS. (a) All rules and statutory requirements applying to partnerships apply to corporations. All rules and statutory requirements applying to partners of partnerships apply to incorporations, stockholders, officers, and directors of corporations. All rules and statutory requirements governing employees or agents of partnerships apply to employees or agents of corporations.

(b) All rules and statutory requirements applying to partnerships apply to the partners of the partnership. Rules and statutory requirements applying to

corporations apply to incorporators, stockholders, officers, and directors of corporations.

SECTION 12. CERTIFICATION OF CERTIFIED PUBLIC ACCOUNTANTS. The certificate of a "Certified Public Accountant" shall be granted by the board to any person:

(1) who is a citizen of the United States or who, if not a citizen, has lived in the State of Texas for the 90 days immediately preceding the date of submitting to the board the initial application to take the written examination conducted by the board for the purpose of granting a certificate of "Certified Public Accountant" or has maintained permanent legal residence in Texas for the six months immediately preceding the date of submission;

(2) who shall have qualified to take the examination for the certificate in this state;

(3) who has attained the age of 18 years;

(4) who is of good moral character;

(5) who meets the requirements of education and experience as hereinafter provided:

(A) the experience requirements shall be for the number of years as provided in Paragraph (B) or (C) below and shall be in public practice under the supervision of a certified public account or public accountant or in an activity comparable thereto or in any combination of such types of experience in work of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters; and all such experience must be satisfactory to the board;

(B) the education requirement shall be either (i) a baccalaureate degree conferred by a college or university recognized by the board, with a major in accounting, or with a nonaccounting major, supplemented by what the board determines to be substantially the equivalent of an accounting major, with not less than 30 semester hours of accounting and 20 additional semester hours of related courses in other areas of business administration; and the experience requirement shall be two years of the experience described in Paragraph (A) above; or (ii) graduation from an accredited high school, plus two years of study of accounting or related subjects including at least 20 semester hours of accounting in one or more colleges or universities recognized by the board, plus six years of experience under the supervision of a certified public accountant in work described in Paragraph (A) above, in which event such certified public accountant or certified public accountants, if the applicant has been employed by more than one, shall certify to the board that the applicant has had during such six-year period the experience described in Paragraph (A) above; and

(C) the experience requirement shall be only one year of the experience described in Paragraph (A) above for any candidate holding a master's degree in accounting or business administration from a college or university recognized by the board or holding a professional degree in accounting with a minimum of 30 semester hours in accounting designated other than as a master's degree but judged by the board

to be equivalent to that degree and to be at an appropriate professional level, if the candidate has satisfactorily completed at least 30 semester hours in accounting and 20 semester hours in other areas of business administration and such related subjects as the board shall determine to be appropriate; and

(6) who shall have passed a written examination in theory of accounts, accounting practice, auditing, commercial law affecting public accounting, and such other related subjects as the board shall determine to be appropriate. A grade of at least 75 percent on each subject shall be required as a passing grade.

Any candidate who meets the education requirements under Paragraph (B) or (C) of Subdivision (5) above and who is duly enrolled as an attorney by the Supreme Court of Texas shall be given credit for commercial law without taking the written examination on commercial law.

The board may by written regulations provide for granting credit to a candidate for his satisfactory completion of a written examination in any of the subjects specified in Subdivision (6) above given by the licensing authority in any other state. Such regulations shall include such requirements as the board shall determine to be appropriate in order that any examination approved as a basis for any such credit shall in the judgment of the board be at least as thorough as the most recent examination given by the board at the time of granting such credit.

None of the education or experience requirements specified above shall apply to a candidate who is reg-

istered as a public accountant under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), and holds a license issued under this Act.

A candidate who has met the education requirements shall be eligible to take the examination in all subjects without waiting until he meets the experience requirements; provided that the candidate also meets the requirements of Subsections (1), (2), (3), and (4) of this section.

A candidate for the certificate of certified public accountant who has successfully completed the examination under Subsection (6) above shall have no status as a certified public accountant, unless and until the candidate has the requisite experience and has received notice of certification as a certified public accountant.

The holder of a certificate heretofore issued under the provisions of prior Acts shall not be required to secure a new certificate as a certified public accountant under this Act.

The applicable education and experience requirements under this Act shall be those in effect on the date of the candidate's application for the examination or reexamination by which the candidate successfully completes the examination. Any person qualified to sit under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), shall continue to qualify to sit for the examination as long as the initial qualifications are met.

Any person who at the effective date of this Act has entered a program to meet the education and experience requirements of The Public Accountancy Act of 1945, as amended and as in force immediately prior to the effective date of this Act, shall file with the board within 180 days after the effective date of this Act a written declaration thereof and submit such proof thereof as the board may require. After the filing of such declaration and proof under rules and regulations prescribed by the board, a person shall be allowed the time reasonably required to complete his program to meet the education requirements in force immediately prior to the effective date of this Act, but no more than four years following the effective date of this Act to meet such education requirements in force immediately prior to the effective date of this Act. Upon completion of such requirements, if otherwise qualified to take the examination, he shall be permitted to make his application and take the examination under such education requirements.

Every person who has met the requirements of Subdivisions (1), (2(, (3), (4), (5), and (6) of this section and is ready to receive his certificate as a "Certified Public Accountant" shall before receiving such certificate take an oath that he will support the Constitution of the United States and of this state and the laws thereof and will comply with the rules of professional conduct promulgated under this Act. This oath shall be administered by a member of the board or by such other person as may be authorized by law to administer oaths.

SECTION 13. RECIPROCITY. The board may in its discretion waive the examination of and may issue a certificate of "Certified Public Accountant" to any person possessing the other qualifications mentioned in Section 12 of this Act who is the holder of a certified public accountant issued under the laws of any state or territory or the equivalent thereof issued in any foreign country, provided the requirements for such certificate in the state or territory or foreign country which has granted it to the applicant were in the opinion of the board at least equivalent to those required in this state at the time the applicant's original certificate was issued. The board shall charge for the issuance of such a certificate as a "Certified Public Accountant" under this section a fee of not more than $100.

SECTION 14. REGISTRATION OF CERTIFIED PUBLIC ACCOUNTANTS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES. A certified public accountant of another state or territory or the holder of a certificate, license, or degree authorizing him to practice public accountancy in a foreign country may register with the board as a certified public accountant of such other state or territory or as holding such certificate, license, or degree of a foreign country, if the board determines that the standards under which the applicant became a certified public accountant or received such certificate, license, or degree were as high as the standards of this state at the same time for granting the certificate of certified public

accountant. A person so registered may describe himself as a certified public accountant of the state or territory which issued his certificate or may use the title held by him in a foreign country; provided that the country of its origin is indicated. The registered person must pay the license fee provided in Section 9 of this Act and a processing fee set by the board of not more than $100.

SECTION 15. EXAMINATIONS, REEXAMINATIONS, AND FEES. All examinations provided for under this Act shall be conducted by the board. The examination for the certificate of "Certified Public Accountant" shall take place as often as the board deems necessary, but not less frequently than once each year. The board as it considers appropriate may use all or part of the Uniform CPA Examination and any related service available from the American Institute of Certified Public Accountants or the National Association of State Boards of Accountancy.

Not later than the 30th day after the day on which the board receives a person's examination results, the board shall send to the person the examination results.

A candidate who fails shall have the right to apply for additional examinations, subject to the satisfaction of the board that the candidate continues to meet requirements of Subdivisions (1), (2), and (4) of Section 12 of this Act.

Any candidate who at the time of filing his application to take the examination or reexamination provided for herein had prior to the effective date of

this Act any examination credits or who after the effective date of this Act shall pass in a single examination of two or more subjects (accounting practice counting as two subjects), or who is registered as a public accountant under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), and who shall pass one or more subjects after the effective date of this Act shall have the right, subject to the approval of his application for reexamination under the provisions of the preceding paragraph, to be reexamined in the remaining subjects only at subsequent examinations held by the board, except that the candidate must pass the remaining subjects within the next 10 consecutive examinations, and the candidate may receive credit for one or more subjects in any subsequent examination. When the candidate shall have received credit for all subjects, the candidate shall then be considered to have passed the examination. A candidate having two or more credits on September 1, 1979, is entitled to an unlimited number of reexaminations on the remaining parts of the examination.

The board shall charge for the first examination of a candidate for certification as a "Certified Public Accountant" a fee of not more than $150, which shall be payable by the applicant at the time of making the initial application. For each subsequent examination or reexamination, the fee shall not exceed for each subject for which the candidate is eligible $60 for accounting practice and $30 for each of theory accounts, auditing, and commercial law, which shall

be payable by the applicant at the time of making the application for the subsequent examination or reexamination. Where the applicant fails to be present for the examination and shows to the board satisfactory reason for such failure, the board may in its discretion refund any fee so paid.

All fees provided for herein shall be paid to the Texas State Board of Public Accountancy.

It is further provided that any applicant who has failed any such examination or reexaminations shall have a right to request a copy of the questions and the answers thereto made by him upon any such examination with the grade clearly shown, together with a copy of solutions to such questions; and the board shall forthwith comply with such request by delivering by registered or certified mail to such applicant a true copy of the questions and his answers thereto, together with a copy of solutions to such questions. The board may charge such applicant a reasonable fee therefor, and such request by the candidate shall be made within six months after the grades are mailed to said candidate and not thereafter.

SECTION 16. USE OF DESIGNATION "CERTIFIED PUBLIC ACCOUNTANT." Any person who has received from the board a certificate of "Certified Public Accountant" and holds a license to practice shall be styled and known as a "Certified Public Accountant" and may also use the abbreviation "CPA."

SECTION 17. USE OF DESIGNATION "CERTIFIED PUBLIC ACCOUNTANT" BY PARTNER-

SHIPS. A partnership engaged in this state in the practice of public accountancy may register with the board as a partnership of certified public accountants provided it meets the following requirements:

(1) at least one general partner must be a certified public accountant of this state in good standing;

(2) each partner thereof personally engaged within this state in the practice of public accountancy as a member must be a certified public accountant in this state in good standing;

(3) each partner must be a certified public accountant of some state in good standing; and

(4) each resident manager in charge of an office of the firm in this state must be a certified public accountant of this state in good standing.

Application for such registration must be made upon the affidavit of a general partner of such partnership who is a certified public accountant of this state in good standing. Such affidavit must set forth the partnership name, the post office address within the state, and the address of the principal office wherever located, together with the name, residence, and post office address of each general partner. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is so registered and which holds a license issued under Section 9 of this Act may use the words "Certified Public Accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the board within one month after the

admission or withdrawal of a partner to or from any partnership so registered.

SECTION 18. USE OF DESIGNATION "PUBLIC ACCOUNTANT." Any individual qualified under this Act to register with the board for the practice of public accountancy and who has so registered and who holds a license for the practice of public accountancy may be styled and known as a "Public Accountant."

SECTION 19. USE OF DESIGNATION "PUBLIC ACCOUNTANT" BY PARTNERSHIPS. A partnership engaged in this state in the practice of public accountancy may register with the board as a partnership of public accountants provided it meets the following requirements:

(1) at least one general partner must be a certified public accountant or a public accountant of this state in good standing;

(2) each partner personally engaged within this state in the practice of public accountancy as a member must be a certified public accountant or a public accountant of this state in good standing;

(3) each partner must be a certified public accountant or a public accountant of some state in good standing; and

(4) each resident manager in charge of an office of a firm in this state must be a certified public accountant or a public accountant of this state in good standing.

Application for such registration must be made upon the affidavit of a general partnership of such

partnership who holds a license to practice in this state as a certified public accountant or as a public accountant. Such affidavit must set forth the partnership name, the post office address within the state, and the address of the principal office of the partnership wherever it is located, together with the name, residence, and post office address of each general partner of the partnership. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is so registered and which holds a partnership license issued under Section 9 of this Act may use the words "Public Accountants" in connection with its partnership name. Notification shall be given the board within one month after the admission or withdrawal of a partner to or from any partnership so registered.

SECTION 20. PRACTICE OF PUBLIC ACCOUNTANCY BY CORPORATIONS. A corporation authorized to engage in the practice of public accountancy in this state may register with the board as a corporation engaged in the practice of public accountancy. Application for such registration must be made upon the affidavit of an officer of such corporation. The affidavit must set out the corporate name, the post office address within the state, and the address of the principal office of the corporation. The board shall in each case determine whether the applicant is eligible for registration. A corporation which is so registered and which holds a license issued under this Act may practice public accountancy under a corporate name indicating that it is engaged in such practice. Licensing provisions and proce-

dures applicable to partnerships under Sections 17 and 19 of this Act are also applicable to corporations.

SECTION 21. REVOCATION OR SUSPENSION OF CERTIFICATE OR LICENSE. (a) After notice and hearing as provided in Section 22 of this Act, the board may revoke or may suspend for a period not to exceed five years any certificate issued under this or any prior Acts or any registration granted under this or any prior Acts or may revoke, suspend, or refuse to renew any license issued under Sections 9 or 13 of this Act or may reprimand the holder of any such license for any one or more of the following causes:

(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining registration under this or any prior Acts or in obtaining a license to practice public accountancy under this Act;

(2) dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Section 8 of this Act;

(4) violation of a rule of professional conduct promulgated by the board under the authority granted by law;

(5) final conviction of a felony under the laws of any state or of the United States;

(6) final conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public

accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other states;

(8) suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action;

(9) failure of a certificate holder or registrant to obtain an annual license under Section 9 of this Act within either (A) three years from the expiration date of the license to practice last obtained or renewed by said certificate holder or registrant or (B) three years from the date upon which the certificate holder or registrant was granted his certificate or registration, if no license was ever issued to him, unless such failure shall be excused by the board pursuant to the provisions of Section 9 of this Act; or

(10) conduct indicating lack of fitness to serve the public as a professional accountant.

(b) Upon conviction by any court of original jurisdiction of a felony under the laws of any state or of the United States or of any crime, an element of which is dishonesty or fraud, under the laws of any state or the United States and after notice and hearing as provided in Section 22 of this Act, the board may suspend any certificate issued under this or prior Acts, any registration granted under this or prior Acts, or may suspend or refuse to renew any license issued under this Act for the period between the date of such conviction and the date such conviction becomes final or set aside. If such conviction becomes final whether by passage of time, exhaustion

of appeal, or otherwise, the board may without further notice and hearing take any action authorized in Subsection (a) of this section. If such conviction is reversed, set aside, or modified so that it no longer constitutes a conviction of a felony or of a crime of which an element is dishonesty or fraud, the board shall reinstate any license, registration, or certificate suspended under this subsection; provided, however, that such reinstatement shall be without prejudice to the rights of the board to invoke any other applicable provisions of this section.

(c) After notice and hearing as provided in Section 22 of this Act, the board shall revoke the registration and license to practice of a partnership or corporation which does not meet all the qualifications for registration prescribed by this Act.

After notice and hearing as provided in Section 22 of this Act, the board may revoke or suspend the registration of a partnership or corporation or may revoke, suspend, or refuse to renew its license under Section 9 of this Act to practice or may reprimand the holder of any such license for any of the causes enumerated in Subsection (a) of this section or for any of the following additional causes:

(1) the revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the license to practice of any partner or shareholder;

(2) the cancellation, revocation, suspension, or refusal to renew the authority of the partnership or corporation or any partner or shareholder thereof to

practice public accountancy in any other state for any cause other than failure to pay an annual registration fee in such other state; or

(3) the suspension or revocation of the right of any partner or shareholder to practice before any state or federal agency for a cause which in the opinion of the board warrants its action.

SECTION 22. HEARING AND REVIEW PROCEDURE. (a) The board may initiate proceedings under this Act either on its own motion or on the complaint of any person.

(b) A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than 20 days prior to the date of said hearing either personally or by mailing a copy thereof by registered or certified mail to the last known address of the accused.

(c) At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses, and examine such evidence as may be produced against him. The accused shall be entitled on application to the board to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

(d) The board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with or upon hearings

under this Act. In cases of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(e) If, after having been served with the notice of hearing as provided for herein, the accused fails to appear at said hearing, the board may proceed to hear evidence against him and may enter such order as shall be justified by the evidence, and a copy of such order shall be mailed by registered or certified mail to the last known address of the accused. The board is hereby authorized to grant continuances upon written request and upon a showing of good cause for failure to appear at such hearing, set out in writing, signed by the accused, and filed with the board. The board may reopen said proceedings and permit the accused to submit evidence in his behalf; provided further that said written request to reopen is filed with the board within 20 days after the date a copy of said order has been mailed to the accused.

(f) A stenographic record of the hearings shall be kept, and if deemed necessary by the board, a transcript shall be ordered.

(g) At all hearings the attorney general or one of his assistants or such other legal counsel as may be employed shall appear and represent the board.

(h) The decision of the board shall be by majority vote.

(i) (1) Any person, firm, or corporation aggrieved by any order, ruling, or decision of the board may

file a motion for rehearing. Such a motion must be filed within 15 days of the rendition of the order, ruling, or decision complained of. Replies to motions for rehearings must be filed within 25 days after the rendition of the order, ruling, or decision. Unless the board has acted upon a motion for rehearing within 45 days from the time it is filed, the motion shall be overruled as a matter of law. The board may extend the time for filing of motions for rehearings and replies, but in no event shall the board extend the period within which it may act to more than 90 days from the date of rendition of the order, ruling, or decision. Any motion for rehearing pending after the expiration of 90 days from the date of rendition of the order, ruling, or decision complained of shall be overruled as a matter of law.

(2) An order, ruling, or decision is final and appealable when the motion for rehearing is overruled or when the time for filing a motion has expired and no motion has been filed.

(3) Any party aggrieved by a final order, ruling, or decision of the board shall be entitled to judicial review under the substantial evidence rule. Proceedings for review shall be initiated by the filing of a petition in the District Court of Travis County, Texas, setting forth the particular objection to such decision, ruling, or order against the Texas State Board of Public Accountancy as defendant, such petition to be filed within 30 days after the decision, ruling, or order complained of is final and appealable. Service of citation on the board may be had

by delivery of a copy of the petition to the board at its offices in Austin, Travis County, Texas. The board shall not be required to give any bond in any cause or appeal arising hereunder. Neither the board nor any member thereof shall be liable to any person, firm, or corporation charged or investigated by the board for any damages incident to such investigation or any complaint, charge, prosecution, proceeding, or trial of the results thereof.

(j) Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate shall have been revoked or may permit the reregistration of anyone whose registration has been revoked or may reissue or modify the suspension of any license to practice public accountancy which has been revoked or suspended.

SECTION 23. PENALTIES. (a) Whenever in the judgment of the board any person who is not the holder of a license to practice public accountancy in this state has engaged in any act or practices which constitute the practice of public accountancy within this state, the board may apply to the district court of the county in which such person resides or has an office to enjoin such person from engaging in the practice of public accountancy, and in such cases the board shall not be required to give bond as a condition precedent to the issuance of such injunctive relief.

(b) Any person who violates any provision of The Public Accountancy Act of 1945, as amended

(Article 41a, Vernon's Texas Civil Statutes), or of this Act shall be deemed guilty of a Class B misdemeanor and each violation shall constitute a separate offense. Any complaints filed under the provisions of this section shall be filed in the county where the offense occurred.

SECTION 24. ADVISORY COMMITTEES. (a) The board may appoint advisory committees composed of individuals who are not members of the board. An advisory committee shall perform the advisory functions assigned to it by the board.

(b) A member of an advisory committee serves without compensation and is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the committee.

(c) A member of an advisory committee serves at the will of the board.

SECTION 25. CONFIDENTIALITY OF CERTAIN BOARD FILES. Any file maintained or information gathered or received by the board concerning a candidate, licensee, or former licensee shall be available for inspection by that candidate, licensee, or former licensee during normal business hours at the offices of the board in Austin. A candidate, licensee, or former licensee may by written communication authorize the board to make any information about that candidate, licensee, or former licensee available for inspection by designated persons or available for inspection by the public at large. Except upon such written authorization, all information received or gathered by the board concerning the

qualifications of any licensee or candidate to register as a public accountant or to receive a certificate as a certified public accountant and all information received or gathered by the board concerning a disciplinary proceeding against a licensee under Section 22 of this Act prior to a public hearing on the matter shall be confidential and shall not be subject to disclosure under Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

SECTION 26. CLIENT-ACCOUNTANT COMMUNICATIONS. (a) Except by permission of the client or person or entity engaging him or the heirs, successors, or personal representatives of such client or person or entity, a certified public accountant, public accountant, partnership, or corporation holding a license to practice under this Act shall not be required to disclose or divulge information which has come into his possession relative to or in connection with any professional services as a certified public accountant, public accountant, partnership, or corporation. Any information derived from or as the result of such professional services shall be deemed confidential and privileged. However, this section shall not apply to information related to the methods or procedures used in: (1) the preparation of a "financial statement"; (2) management advisory or consulting services; or (3) tax returns and supporting schedules.

(b) No information shall be deemed privilege from disclosure in:

(1) an action against a licensee by the client or entity engaging the licensee;

(2) any disciplinary investigation or proceeding conducted under or pursuant to this Act; or

(3) any criminal investigation or proceeding.

(c) No documentary information, books or records shall be deemed privileged from examination by the Comptroller of Public Accounts or any agency of the State of Texas pursuant to the authority granted by law.

SECTION 27. APPLICATION OF OPEN MEETINGS LAW AND ADMINISTRATION PROCEDURE AND TEXAS REGISTER ACT. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 28. APPLICATION OF SUNSET ACT. The Texas State Board of Public Accountancy is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

SECTION 29. TRANSITION. (a) The Texas State Board of Public Accountancy to which this Act refers is a continuation of the Texas State Board of Public Accountancy created by The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes).

(b) A person holding office as a member of the Texas State Board of Public Accountancy on the effective date of this Act shall continue to hold office for the term for which the member was originally appointed.

(c) The terms of office of all succeeding members of the board expire on January 31 of odd-numbered years, six years after expiration of the previous term of office. The initial appointment under this Act shall be for such staggered terms as are necessary to provide for the expiration of the terms of one-third of the board members every two years.

(d) After the effective date of this Act the govenor shall appoint members to the board in a manner that achieves as soon as possible the membership plan provided in this Act.

SECTION 30. REPEALER. The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), is repealed.

SECTION 31. EFFECTIVE DATE. This Act takes effect on September 1, 1979.

SECTION 32. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

President of the Senate	Speaker of the House

I hereby certify that S.B. No. 797 passed the Senate on April 5, 1979, by a viva-voce vote; May 23, 1979, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 1979, House granted request of the Senate; May 28, 1979, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 797 passed the House, with amendments, on May 18, 1979, by the following vote: Yeas 138, Nays 0, one present not voting; May 26, 1979, House granted request of the Senate for appointment of Conference Committee; May 28, 1979, House adopted Conference Committee Report by the following vote: Yeas 126, Nays 0, one present not voting.

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Chief Clerk of the House

Approved:

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Date

.....

Governor

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